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is indefinite, and to preserve mutuality in the contract, the franchise can continue only so long as both parties are consenting thereto. The city can regulate the price to be charged for gas as long as the company continues to do business in that city, but this is by virtue of the statute and not by virtue of the contract, *Gas Light Co. v. Zanesville*, 47 Ohio St. 45, 23 N. E. 60. At the expiration of a franchise the mains, pipes, etc. belong to the original owner and the city cannot authorize another company to take possession of them even on payment to the first company of their fair value. *Cleveland Ry. Co. v. Cleveland*, 204 U. S. 116, 27 Sup. Ct. 202, 51 L. Ed. 399. When a corporation accepts the benefit of a franchise with knowledge of its termination, it cannot complain, when the city insists that the termination of the contract be observed, that such termination may affect the value of its property. *Cedar Rapids Water Co. v. Cedar Rapids*, 118 Iowa, 234, 256, 91 N. W. 1081; *Skaneateles Water Works Co. v. Village*, 161 N. Y. 154, 55 N. E. 562, 46 L. R. A. 687; after the expiration of its franchise the Cincinnati Ry. Co. continued to occupy the streets by the express consent of the board of public works yet the court held the defendant a mere trespasser. *Cin. Ry. Co. v. Cincinnati*, (Ohio), 44 N. E. 327. After the expiration of its franchise the company is entitled to remain in possession of the streets such a reasonable time as will allow it to remove its mains and pipes therefrom. *Cedar Rapids Water Co. v. Cedar Rapids*, supra. In the principal case the court held that the ten year agreement as to the price of gas having expired, the city, under its power of regulation might impose new conditions as to price, and the gas company might accept or reject these. If the company finally refuses to comply with the conditions it necessarily incurs the penalty of forfeiture of its franchise to serve the people of the city, but it may remove its equipment without interference on the part of the municipality.

HUSBAND AND WIFE—COMMUNITY OR SEPARATE PROPERTY—PRESUMPTION.—Appellant, Mrs. Lee, owning \$6,500 as separate property, contracted to buy land for \$3,200, paying \$640 cash and giving personal notes for the balance. She made two payments from her separate funds, then sold the land for \$6,400. A deed to the vendee was deposited in a Spokane bank in escrow. Against his wife's wishes, Lee joined in this deed. Vendee completed the payments and paid the balance into the bank. Respondent garnished this fund to satisfy its judgment against Lee. Appellant intervened, claiming principal and profits were her separate property. *Held*, the entire fund was the wife's separate property, not subject to the husband's debt. *United States Fidelity and Guaranty Co. v. Lee* (1909), — Wash. —, 107 Pac. 870.

The presumption is that property acquired by either spouse during marital relation is community property. *Succession of Graf*, — La. —, 51 South 115; *Booker v. Castillo*, 154 Cal. 672, 98 Pac. 1069 (with statutory exceptions). But this presumption may be rebutted. *Barr v. Simpson*, — Tex. Civ. App. —, 117 S. W. 1041; *Brown v. Lockhart*, 12 N. M. 10, 71 Pac. 1086. This doctrine is well established, and certainly ought to work out equitable results in most cases. But in applying the rule, different courts have reached conclusions not always harmonious. Compare holding in *Barr v. Simpson*, supra,

that the increase of cattle bought with separate funds belongs to community, with principal case, in which the Washington court says: "Where property is acquired during marriage, the test of its separate or community character is whether it was acquired by community funds and community credit, or separate funds and the issues and profits thereof." As a practical working formula and a protection against hardships now frequently caused by the presumption, this test is to be commended.

HUSBAND AND WIFE—RIGHT TO SEPARATE MAINTENANCE—CONSIDERATION.—Plaintiff and defendant separated as the result of a beating that defendant had given plaintiff while in a drunken rage. Friends intervened to persuade the parties to re-establish marital relations. Finally, plaintiff agreed that if the defendant would contract not to drink or abuse her and in case he broke this contract and abused her so that she should be obliged to leave him, he would make suitable provision for her support, she would return to him. An agreement to this effect was made, which defendant kept for a short time. Defendant began drinking again and abused plaintiff in the presence of friends by saying that she was criminally intimate with one of their acquaintances. Finally this abuse culminated in an attack on her that led her to leave him, fearing that he was about to do her great bodily harm. This action is brought for a divorce from bed and board and to enforce the above mentioned contract. The husband defended, traversing plaintiff's allegations, alleging she had been criminally intimate with certain persons and that the above contract was obtained by fraud. Defendant, however, offered no proof. *Held*, plaintiff entitled to limited divorce and enforcement of the contract; her agreement to resume martial relations with him being ample consideration to support the contract. *Hite v. Hite* (1910), — Ky. —, 124 S. W. 815.

It is the settled law of England and the United States that an agreement of separation between husband and wife, providing for her separate maintenance and she releasing all claims on his estate is lawful, and no principle of public policy is disturbed. *Daniels v. Benedict*, 97 Fed. 367, 38 C. C. A. 592; *Carson v. Murray*, 3 Paige 483; *Walker v. Walker*, 76 U. S. (9 Wall.) 743, 19 L. Ed. 814. But when the agreement, as in the principal case, is made in contemplation of a separation, not immediate, the general rule is that such an agreement is void. *Durant v. Titley*, 7 Price 577; *Gould v. Gould*, 29 How. Pr. 458; *H. v. W.*, 3 Kay & J. 382; *Bowers v. Hutchinson*, 67 Ark. 15, 53 S. W. 399; *Randall v. Randall*, 37 Mich. 563. The principal case differs from any above cited, in that the plaintiff was not to have the benefit of the contract unless she left the defendant for good and reasonable cause, and public policy would seem to favor the enforcement of such a contract, as a contract has been sustained where separation is maintainable even though it is understood that a future divorce will be obtained. *King v. Mollohan*, 61 Kan. 683, 60 Pac. 731, affirmed, 61 Kan. 692, 61 Pac. 685. The duty of a husband to support his wife furnishes a sufficient consideration to sustain a contract for the payment of money when the parties are living apart. *Patterson v. Patterson*, 111 Ill. App. 342.